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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 DEMEKO HOLLAND,

8 Petitioner,

9 v.

10 PATRICK GLEBE,

11 Respondent.

Case No. C14-70 JCC-BAT

**REPORT AND  
RECOMMENDATION**

12 Petitioner, proceeding pro se, has filed an application to proceed in forma pauperis  
13 (“IFP”) in this habeas case. Dkt. 4. Petitioner’s IFP application reflects that his average monthly  
14 receipts are \$245.37 and his average spendable balance is \$36.38. Dkt. 4-1, p. 1.

15 **DISCUSSION**

16 As a general rule, all parties instituting any civil action, suit or proceeding in a United  
17 States District Court must pay a filing fee. 28 U.S.C. § 1914(a). The Court may authorize the  
18 commencement of an action “without prepayment of fees and costs of security therefor, by a  
19 person who submits an affidavit that ... the person is unable to pay such fees or give security  
20 therefor.” 28 U.S.C. § 1915(a)(1). Thus, an action may proceed despite a failure to prepay the  
21 filing fee only if leave to proceed IFP is granted by the Court. *See Rodriguez v. Cook*, 169 F.3d  
22 1178, 1177 (9th Cir.1999). Permission to proceed IFP is itself a matter of privilege and not a  
23 right and the denial of IFP status does not violate the applicant’s right to due process. *Franklin*  
*v. Murphy*, 745 F.2d 1221, 1231 (9th Cir.1984) (*citing Weller v. Dickson*, 314 F.2d 598, 600 (9th

1 Cir), *cert. denied*, 375 U.S 845 (1963). The Court has broad discretion to grant or deny an IFP  
2 application. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir.1990); *Weller*, 314 F.2d at 600-601.

3 Based on the level of income reflected in Petitioner's IFP application, he can afford to  
4 pay the \$5.00 filing fee for the filing of his habeas petition. Petitioner's IFP application should  
5 therefore be **DENIED**.

### 6 **CONCLUSION**

7 The Court recommends that Petitioner's IFP application be **DENIED** and that Petitioner  
8 be directed to pay the usual filing fee within 30 days of the District Court's Order. If Petitioner  
9 fails to pay the filing fee, the Clerk should be directed to close the file.

10 Any objections to this Recommendation must be filed and served upon all parties no later  
11 than **February 19, 2014**. The Clerk should note the matter for **February 24, 2014**, as ready for  
12 the District Judge's consideration if no objection is filed. If objections are filed, any response is  
13 due within 14 days after being served with the objections. A party filing an objection must note  
14 the matter for the Court's consideration 14 days from the date the objection is filed and served.  
15 The matter will then be ready for the Court's consideration on the date the response is due.  
16 Objections and responses shall not exceed twelve (12) pages. The failure to timely object may  
17 affect the right to appeal.

18 DATED this 29<sup>th</sup> day of January, 2014.

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20 BRIAN A. TSUCHIDA  
21 United States Magistrate Judge  
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